

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

KEESHTA WALTER WEMIGWANS,

Defendant-Appellee.

UNPUBLISHED

March 4, 2003

No. 239736

Isabella Circuit Court

LC No. 01-000053-CZ

ON REHEARING

Before: Holbrook, Jr., P.J., and Zahra and Owens, JJ.

PER CURIAM.

The prosecution appeals by leave granted from the circuit court's order quashing the information using defendant's prior tribal court convictions for purposes of supporting the felony charge of operating a vehicle while under the influence of intoxicating liquor (OUIL), MCL 257.625(10)(c).¹ We reverse and remand.

I. Facts and Procedure

On June 25, 2001, defendant was arrested for drunk driving following a traffic stop. Defendant had no prior OUIL convictions in Michigan courts, but he had two convictions for OUIL in the tribal court of the Saginaw Chippewa Indian Tribe of Michigan.² Upon discovery of the tribal convictions, the prosecution sought to use the tribal court convictions to enhance defendant's charge from a drunk driving misdemeanor to felony drunk driving, OUIL 3rd, MCL 257.625(10)(c).

On November 11, 2001, defendant filed two motions to quash the tribal convictions. The trial court granted defendant's motions and quashed the use of the two prior tribal courts' drunk driving convictions, concluding that defendant did not receive sufficient due process safeguards in the tribal courts. In both prior actions before the tribal court, defendant was convicted by plea, without the benefit of counsel. The trial court concluded that defendant was

¹ The misdemeanor of operating a vehicle under the influence of intoxicating liquor is elevated to a felony "[i]f the violation occurs within 10 years of 2 or more prior convictions" MCL 257.625(10)(c). This felony is known as OUIL 3rd.

² The Saginaw Chippewa Indian Tribe of Michigan is an independent sovereign nation, which has its own independent judiciary and court system.

denied sufficient due process because an indigent defendant in the tribal system is not entitled to the appointment of counsel.

II. Analysis

On appeal, the prosecution argues that defendant's prior tribal court convictions may be used to enhance the offense from a misdemeanor to a felony. Generally, this Court would review a trial court's decision to quash an information solely for an abuse of discretion. *People v Hamblin*, 224 Mich App 87, 91; 568 NW2d 339 (1997). This case, however, turns upon questions of statutory interpretation and constitutional due process concerns. We review de novo these legal questions. *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994); *People v Pennington*, 240 Mich App 188, 191; 610 NW2d 608 (2000); *People v Nimeth*, 236 Mich App 616, 620; 601 NW2d 393 (1999).

The primary goal of judicial interpretation of statutes is to ascertain and give effect to the Legislature's intent. *Frankenmuth Mut Ins Co v Marlette Homes*, 456 Mich 511, 515; 573 NW2d 611 (1998). If the plain and ordinary meaning of a statute is clear, judicial construction is neither necessary nor permitted. *Elia v Hazen*, 242 Mich App 374, 381; 619 NW2d 1 (2000). We may not speculate as to the probable intent of the Legislature beyond the words expressed in the statute. *In re Schnell*, 214 Mich App 304, 310; 543 NW2d 11 (1995). When reasonable minds may differ as to the meaning of a statute, the courts must look to the object of the statute, the harm it is designed to remedy, and apply a reasonable construction which best accomplishes the statute's purpose. *Marquis v Hartford Accident & Indemnity (After Remand)*, 444 Mich 638, 644; 513 NW2d 799 (1994).

The Michigan Vehicle Code, MCL 257.1 *et seq.*, allows the use of prior foreign convictions for charge enhancement in OUIL cases. MCL 257.625(10). Generally, trial courts in Michigan may consider convictions based on "a law of another state substantially corresponding [to Michigan law]." MCL 257.625(23). Michigan law defines "state" broadly to include other states, territories, foreign countries and Indian tribes. MCL 257.65. To establish that the law of the foreign jurisdiction substantially corresponds to Michigan law, the prosecution must prove that the foreign legal system provided defendant with sufficient due process safeguards in the earlier convictions. *People v Gaines*, 129 Mich App 439, 443; 341 NW2d 519 (1983). This determination is made on a case-by-case basis. *Id.* at 449.

The Michigan Supreme Court has observed that "due process of law" is essentially the legal equivalent of procedural fairness. *In re Chrzanowski*, 465 Mich 468, 486; 636 NW2d 758 (2001). The concept of "due process of law" as it is embodied in the Michigan Constitution, Const 1963, art 1, §17, and the Fourteenth Amendment of the United States Constitution demands that a law shall not be unreasonable and shall bear substantial relation to the object being sought. Whether a foreign jurisdiction gave sufficient due process to a defendant for purposes of enhancing criminal charges depends on the degree of similarity between the substantive and procedural laws of the foreign jurisdiction compared to the laws in Michigan. Courts must examine the facts and circumstances of the case for any intolerably high risks of unfairness. *Chrzanowski*, *supra* at 486. Simply put, if the foreign jurisdiction subjected a defendant to a law or procedure that offends traditional notions of fairness as expressed in Michigan and federal constitutional jurisprudence, then the defendant was not afforded sufficient

due process protections in the foreign jurisdiction, and the prior convictions cannot be used in Michigan courts for purposes of enhancing criminal charges.

Here, defendant does not contend that the substantive law supporting the tribal convictions fails to correspond substantially to Michigan's drunk driving laws. The drunk driving law applicable in the tribal court is identical to Michigan's statute (the Saginaw Chippewa Tribal Legislature adopted, in full, the Michigan OUIL statute.) Thus, whether defendant was afforded sufficient due process protections turns on the degree of similarity in the rules of criminal procedure of the tribal court compared to Michigan.

There are many significant similarities between the criminal procedure followed in the tribal court and the procedure followed in Michigan courts. The record establishes that defendant was informed of the following rights and opportunities: to be informed of the nature and the cause of the accusations against him; to be confronted with witnesses against him; to have a speedy and public trial in which he could present witnesses in his favor; to have a trial by jury, in which the government has the burden to prove defendant's guilt beyond a reasonable doubt; to be protected against self-incrimination and to be free from the threat of double jeopardy; to have counsel at his own expense; and to be protected against cruel or unusual punishment, excessive bails, or fines. Indian Civil Rights Act, 25 USC §1302. These rights are substantially similar to rights afforded defendants in Michigan courts.

The tribal court informed defendant of his rights prior to accepting each of his guilty pleas. In both prior cases before the tribal court, the tribal judge tested defendant's competency before accepting his pleas. The record establishes that defendant acted freely, made a knowing and voluntary waiver of the many rights that were enumerated to him prior to his pleas, and made an intelligent, informed and conscious decision to plead guilty in each case. In so doing, defendant received the benefit of sentencing agreements that eliminated the threat of long-term incarceration.³ In addition to the protections of the Indian Civil Rights Act, defendant had, among other things, the right to access the tribal appellate courts. Saginaw Chippewa Tribal Code §§1.513, 1.514. Defendant elected not to assert his right to seek appeal of the tribal convictions.

The only significant difference between the procedural process afforded in the two judicial systems, as pointed out by the trial court, relates to the appointment of counsel to indigent defendants. Under Michigan law, if defendant established indigency and the risk of incarceration, then he would have been entitled to the benefit of counsel. Under tribal law, a defendant receives no such guarantee. Instead, a defendant only receives the benefit of counsel at his own expense. Preliminarily we note that Michigan law does not require that all process be identical. Rather, we review in its entirety the process afforded defendant in the foreign

³ The tribal court convicted defendant of OUIL on March 2, 1999, and ordered him to serve sixty days in jail with fifty-nine days suspended and credit for one day already served. The tribal court later convicted defendant of OUIL 2nd offense on November 24, 1999, and ordered him to serve 180 days in jail with 133 days suspended and credit for two days already served. By court order, defendant served the remaining forty-five days on an alcohol monitor/tether instead of jail. In addition, the tribal court ordered community service, fines, and probation for defendant.

jurisdiction for an intolerably high risk of unfairness. In the present case, the substantive laws in question are identical, the procedural protections afforded in the foreign jurisdiction are generally consistent with the procedural protections afforded under Michigan law and defendant was found to have made a knowing, free and voluntary waiver of the many rights that were expressly explained to him in order to tender a plea of guilty. Thus, it would not be without reason to conclude, regardless of defendant's indigency status, that defendant was afforded sufficient due process in the foreign jurisdiction to allow the use of the foreign convictions for purposes of enhancing the charge against defendant. However, we need not reach this conclusion.

We conclude defendant failed to establish that he was prejudiced by the denial of appointed counsel in the tribal court because he failed to establish his indigency at the time he offered his tribal court guilty pleas. A defendant who collaterally challenges an antecedent conviction allegedly procured without the benefit of counsel or a knowing waiver of the right to counsel bears the burden of establishing that the conviction was improperly obtained. *People v Carpentier*, 446 Mich 19, 31; 521 NW2d 195 (1994). Based on our review of the entire record, we conclude that nothing occurred in the two prior tribal court proceedings that cast any serious doubt on the veracity or fairness of process of defendant's prior convictions. Use of prior foreign convictions for enhancement purposes under these circumstances is appropriate.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.
/s/ Brian K. Zahra
/s/ Donald S. Owens